



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 13 1997

FROM:

Stephen D. Luftig, Director
Office of Emergency and Remedial Response
Office of Solid Waste and Emergency Response

Handwritten signature of Stephen D. Luftig.

Barry N. Breen, Director
Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

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TO:

Director, Office of Site Remediation and Restoration
Region I
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, IX
Director, Waste Management Division
Region IV
Director, Superfund Division
Regions V, VI, VII
Assistant Regional Administrator, Office of Ecosystems Protection and
Remediation
Region VIII
Director, Environmental Cleanup Office
Region X
Regional Counsels
Regions 1 - X

SUBJECT: Final FY 1998 Superfund Reforms Strategy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Signed November 13, 1997
copy of Signed Original En Route

OERR Directive No. 9200.0-28

MEMORANDUM

SUBJECT: FY 1998 Superfund Reforms Strategy

FROM: Stephen D. Luftig, Director *s/Steve Luftig*
Office of Emergency and Remedial Response
Office of Solid Waste and Emergency Response

Barry N. Breen, Director *s/Barry Breen*
Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

TO: Director, Office of Site Remediation and Restoration
Region I
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Region IX
Director, Waste Management Division
Region IV
Director, Superfund Division
Regions III, V, VI, VII
Assistant Regional Administrator,
Office of Ecosystems Protection and Remediation
Region VIII
Director, Office of Environmental Cleanup
Region X
Regional Counsel, Regions I - X

Thank you for commenting on the August 15, 1997, memorandum entitled "Proposed FY 1998 Superfund Reforms Strategy". They were useful in defining the issues and fine tuning the solutions. The overall goals and strategy are set out below, as well as

priorities for reforms and areas for expansion. This document should be helpful to both Headquarters and Regions as we move forward to implement reforms this year.

IMPLEMENTATION AND EVALUATION GOALS

As proposed, it is our plan to continue to implement the reforms that are already in place rather than develop a new round of Super-fund Reforms. These efforts have targeted the key areas of the program needing improvement through three rounds of administrative reforms. However, based on the feedback we have received from our stakeholders, we need to continue to improve how we are implementing these reforms and communicating progress. To address these stakeholder concerns, the following are our strategic goals:

- **Commitment to the reforms** in all Regional and Headquarters offices coupled with consistent implementation of guidance
- **Refining** reforms based on experience to improve implementation
- **Communicating** more effectively the scope, goal, and successes of each reform
- Evaluating each reform to determine which successful efforts (e.g., successful pilots) we should more fully incorporate into the program (i.e., through written policy, guidance or directives)
- **Measuring** the progress of each reform beyond just the numbers. We need to give the story behind the numbers; the benefits achieved by the reform.

As a part of the efforts to measure and communicate successes, we are proposing additions to the SCAP manual that are specific to reforms. Attachment 1 is the proposed SCAP manual Appendix G, which would be reported annually. We will continue to work with Regional contacts to refine these measures before you are required to report on them.

SUPERFUND REFORMS PRIORITIES

To help the Regions focus their limited resources,

Headquarters has attempted to identify the highest priorities among Superfund Reforms out of the more than 45 ongoing initiatives. These priorities are consistent with the reform categories highlighted in the SPIM Manual. Response action reforms and enforcement reforms are presented separately below.

Response Action Reforms

Commitment to Implementing Remedy Reforms: The highest priority for Superfund Program Reforms is Regional commitment to implementation of reforms designed to control remedy costs and promote cost effectiveness (i.e., utilization of the National Remedy Review Board; updating remedy decisions based on changes in science, technology, new information or other significant changes; and appropriate use of presumptive remedies).

Reduce Transaction Costs: EPA will control the costs of Superfund cleanups through effective and efficient oversight of PRP conducted response actions and establishing a lead regulator at each Federal facility site undergoing cleanup.

Enhance Community and State Involvement: Whenever possible EPA will increase its use of the Superfund Reforms designed to address and resolve stakeholders concerns, including outreach to Brownfields' stakeholders, enhanced community and State involvement in the assessment of risks posed by sites and the selection of remedies to address such risks, and the appropriate implementation of cleanup decisions by States and/or Tribes. In particular, Regions should continue to ensure that stakeholders' concerns are addressed by the Regional Ombudsman, and Regions should support State remedy selection pilots.

Promote Economic Redevelopment: EPA will support economic redevelopment and reuse of sites by archiving sites in CERCLIS, partial deletion of sites, and consistently considering response actions taken by PRPs in making listing decisions.

Enforcement Fairness Reforms

Evaluate and Close Out Pilots: It is crucial that these pilots are carefully evaluated and closed out, upon completion of the piloted activity. Most of these pilots were initiated in 1995, and as we come to closure, we must evaluate each pilot and determine lessons learned, along with incorporating successful

activities into the program. Pilot reforms include: PRP Search Pilots; Expedited Settlement Pilots; Allocation Pilots; and Community Involvement in the Enforcement Process.

Consistent Integration of Enforcement Reforms into the Base Program: Most enforcement reforms are permanent changes in the Superfund enforcement program, and are now part of our base program. Many of these reforms are also SCAP targets and reporting measures. As such, we should continue to implement the following enforcement reforms: *De Minimis* Settlements; Orphan Share Compensation; Site Specific Special Accounts; Equitable Issuance of UAOs; Removing Liability Barriers (e.g., PPAs) ; Alternative Dispute Resolution (ADR); Expanded PRP Searches; and implementing the revised *De Micromis* Guidance. These reforms will also need to be evaluated and measured so that we can report on their progress to the public.

Areas for Expansion: As discussed below, OSRE is expanding certain enforcement reforms. These areas include: Orphan Share Compensation in the Cost Recovery context, Special Account Disbursement to PRPs, and Using *De Micromis* Waiver Language in settlements.

EXPANSION OF REFORMS

Some of the Superfund Administrative Reforms, in both the cleanup and enforcement areas, have expanded beyond the scope of the original reform. The expansion areas follow below.

Cleanup Expansion

National Remedy Review Board: The Board has achieved significant successes during its first years of operation, maintaining our commitments to remedies that utilize treatment and provide long-term reliability while finding major cost saving opportunities. In the coming year, the Office of Emergency and Remedial Response (OERR) is proposing to refine the scope and nature of the Board's mission as well as refine its implementation procedures. For FY 1998, the Board plans to review non-time-critical removal actions that meet the following criteria:

- The engineering evaluation/cost analysis (EE/CA) has been or will be issued for public comment after October 1, 1997;

- For Department of Energy radioactive waste sites, the action exceeds \$75 million; or
- For all other sites, the action exceeds \$30 million.

The Board will not review Department of Defense Base Relocation and Closure (BRAC) sites. With the exception of the non-time-critical criteria mentioned above, the Board proposes no change to its current review criteria. The Board will reconsider its criteria if out year review efforts will not capture the intended 8 to 10 percent of RODs per year. For sites that are close to, but do not trigger, the \$30 million cost criteria, the appropriate Regional Board member will discuss briefly with the Board the key remedy selection and cost issues and present the Region's position on whether the site would benefit from Board review. Also, to foster stakeholder involvement the Board will raise the limit of PRP and community group written submissions from 5 to 10 pages.

Updating Records of Decision: This reform has been very successful in bringing past decisions in line with current remediation science and technology. By doing so, these updates improve the cost-effectiveness of site remediation while ensuring reliable short- and long-term protection of human health and the environment. The quantifiable positive results of this reform have been announced in EPA's testimony before Congressional subcommittees, private industry evaluations of Superfund reforms, and a report of the U.S. General Accounting Office. We expect to continue working with the States and PRPs to identify opportunities for improving our remedies.

It is clear that all EPA Regional Offices are fully committed to this reform. However, each region faces unique circumstances and resource limitations and so must consider implementation in the context of other program objectives. Thus, Headquarters does not plan to identify numerical targets or site categories to guide regional work. Nevertheless, it is important to our program to be able to articulate how our Agency expects to conduct these activities. For this reason, we request that each region explain how it plans to address the remedy updates reform in FY 98. This plan should address both Fund and enforcement lead decisions. To the extent possible, this memorandum should identify any criteria the region expects to use to identify Fund lead decisions as update candidates or to evaluate the adequacy

of petitions submitted by others. The regions are encouraged to include in these plans any efforts to update decisions based on reasons other than advances in remediation science and technology. These regional plans should be forwarded to Bruce Means in Headquarters by November 29, 1997.

As a result of Congressional inquiries, we will be tabulating specific remedy updates data on a quarterly basis. This activity, thus, supersedes the proposal made in the August 15, 1997, memorandum for tracking.

Oversight of PRP Response Actions: Through successful administration of PRP oversight, EPA can maximize effectiveness and efficiency while still ensuring that PRPs conduct high quality cleanups and that the public's interest is protected. Good working relationships between PRPs and EPA may reduce oversight as well as overall cleanup time/costs for both parties. For FY 1998, the focus of the PRP oversight administrative reform will be implementing practices to achieve or enhance such working relationships with capable and cooperative PRPs. This effort refines the scope of OSWER's July 31, 1996, directive on "Reducing Federal Oversight at Superfund Sites with Cooperative and Capable Parties," which provides criteria for determining whether PRPs are capable and cooperative and requires Regions to identify candidate sites for reduced EPA oversight. Under this reform, Regions will meet with participating PRPs to:

- Provide information on planned oversight activities
- Discuss potential future oversight costs
- Review oversight activities of the previous billing period
- Commit to send timely bills for oversight as appropriate

Enforcement Expansion

Orphan Share: The 1996 orphan share guidance only applies to those parties that agree to perform the cleanup. On September 30, 1997, Steve Herman, Assistant Administrator for Enforcement and Compliance Assistance (OECA), and Lois Schiffer, Assistant Attorney General for Lands and Natural Resources, signed a memorandum to transmit an addendum to the "Interim CERCLA

Settlement Policy" to address stakeholder comments regarding expanding this reform to cost recovery parties. The addendum describes some factors for the government to consider when exercising its discretion to offer orphan share compromises in cost recovery settlements. This expansion applies to cost recovery cases where there is a significant orphan share. Non-work parties in recovery will not get a better deal in orphan share compensation than work parties. It should be noted that this addendum generally will not apply to recalcitrant parties that refused a previous settlement offer that included orphan share compensation.

Special Accounts: This reform's original goal was to ensure interest would accrue on these special accounts, and to encourage the Regions to establish more of the accounts. EPA was successful in getting the interest issue resolved in 1996, which allowed us to recognize approximately \$44M in interest on the \$364M in special account proceeds received to date. The next logical outgrowth of this reform would address how EPA manages these special account proceeds. The enforcement office is exploring using funds in these accounts as an incentive for PRPs to sign a settlement agreement to perform work, by offering a portion of the account to the PRPs in appropriate circumstances after they have signed a settlement and performed work. We are currently developing guidance that explains how special accounts could be used as a settlement tool, by distributing a portion of the account to the major PRPs agreeing to the cleanup. The Regional Special Account contacts will be contacted to review this draft guidance.

De Micromis: This reform doubled the recommended cutoff levels for the de micromis parties in the revised 1996 guidance. These levels are consistent with the legislative language the Agency supported during the 103rd Congress. However, another vehicle for protecting de micromis parties is through the use of waivers in our settlement agreements. This method can be less resource intensive than actually developing de micromis settlements for those parties that are threatened with lawsuits. De micromis waiver language was developed in the 1995 RD/RA model settlement, which basically states PRPs will not pursue these parties. Unfortunately, many people were confused regarding whether they should use this waiver in their settlements, since this section in the model was bracketed. The enforcement office would like to clarify the model language waiver and to promote

its use in any appropriate settlements' (e.g., RD/RA, de minimis)

RELATED EFFORTS

Consistent with EPA's objective of continuously refining and improving the program (even beyond the reforms), the Agency recently announced two new draft policies designed to improve Superfund's effectiveness and respond to stakeholders concerns related to liability, transaction costs, and economic redevelopment. The first was issued on July 11, 1997, in the Federal Register requesting comments on the *Municipal Solid Waste Settlement Proposal*. The second was issued on August 1, 1997, regarding EPA's new draft policy encouraging the development of State Voluntary Cleanup Programs (*Guidance for Developing Superfund Memoranda of Agreement (MOA) Language Concerning State Voluntary Cleanup Programs*),

COMMUNICATIONS

We will continue to work with the regions, stakeholders, and the media to communicate our successes. Certainly, those successes go beyond the reforms specifically mentioned as our highest priorities. For example, we have just completed the final report on Superfund block funding agreements with States, and we are ready to implement a standard reporting system for risk assessments that, with little or no additional costs to the regions, will greatly enhance our risk communications with stakeholders. The new lead regulator policy for Federal Facilities was also issued earlier this month. Attachment 2 is the Superfund Reforms Scorecards (September 1997) showing our overall progress in implementing all the Second and Third Round Superfund Reforms. We will send you an updated version in the very near future, and we would urge you to use this information as you communicate with the public about Superfund. Attachment 3 is an outline of the draft communications strategy currently under development.

General inquiries about Superfund Administrative Reforms should be directed to 1-800-424-9346. The program contact for reforms is Steve Caldwell in OERR and the enforcement contact is Victoria van Roden. The contact for the communications strategy is Helen DuTeau in OERR.

SCAP MANUAL -- NEW APPENDIX G
SUPERFUND REFORMS MEASURES (OERR & OSRE)

1. Number of proposed cleanup decisions reviewed by the National Remedy Review Board and the estimated impact of reviews.
2. Number of existing records of decision for site cleanups updated based on' (1) the latest in scientific information and technological advancements, or (2) non-scientific changes and the estimated dollar savings as a result of reviews.
3. Of the new RI/FS starts this year, the number (and percentage of risk assessments designed by stakeholders (e.g., communities) or conducted by PRPs.
4. Of the new RI/FS starts this year, the number (and percentage; of risk assessments performed using the generic risk assessment statement of work and the number utilizing the standard risk data reporting tables.
5. Number of sites considered as low priority for listing on the NPL because cleanup activities were considered in setting priorities; the number of partial site deletions (Federal facility and other NPL sites) initiated by EPA to return property to productive uses return, and the economic and other impacts on the community.
6. Number of Federal Facility Agreements revised to reflect changes in priority activities within DOD and DOE facilities (i.e., number of agreements and number of milestones revised).
7. Number of non-Federal facility, NPL sites ranked (prioritize& and funded) under the Superfund Risk-Based Priority Setting System.
8. Of the sites scheduled for negotiation starts this year, the number of negotiations where EPA offered to compensate a portion of the orphan share and the total dollar amount offered.
9. Number of settlements establishing interest-bearing special accounts for future site costs and the total dollar amount set aside in such accounts.

10. For each UAO issued, documentation of non-issuance to excluded parties.

11. The number of requests for de minimis settlements; the objective of the reform is to prevent litigation against such parties; success is that there is no/limited need to do a de minimis settlement.

12. Number of prospective purchaser agreements issued, along with the benefits achieved.

13 . Number of sites where EPA discussed its planned oversight activities and potential oversight costs with capable and cooperative PRPs, and committed to provide timely bills for oversight.

14. Number of NPL sites where EPA informed the communities about the availability of Technical Assistance Grants (TAGs), the number of sites where EPA received applications, and the number of TAGs EPA awarded. In addition, the number of sites where the Technical Outreach Services for Communities (TOSC) office has provided support to communities.

15. Number of NPL and non-NPL sites where the State (or Tribe) or community has a lead role in the response, including selection of the cleanup remedy, consistent with CERCLA and the NCP.

16. Percentage of concerns addressed (i.e., referred, resolved, pending) by the Superfund Regional and HQ Ombudsman.

ATTACHMENT 2

OEER Directive No. 9200.0-28

The following table gives examples of administrative reforms that would apply to general reform criteria:

Criterion - Superfund cleanups are:	Round 2	Round 3
aster	4d. Clarifying NPL sites (partial deletions) 8. Guidance for Remedy Selection 1i. Integrated Federal/State/Tribal Site Management Program Program Accomplishment: Construction Completions	9. Partial Deletions
Fairer	Greater Use of Allocation Tools (ADR) 3. Allocation Process 4e. Removing Liability Barriers Program Accomplishment: De Minimis Parties Settled Out	11. Orphan Share Compensation 12. Site-Specific Special Accounts 13. Equitable Issuance of UAOs 14. Revised DeMicromis Guidance 16. Reduced Oversight of PRPs
Cost less		1a. NRRB 1b. Remedy Selection "Rules of Thumb" 2. Update Remedy Decisions 3a. Clarify Role of Cost in Remedy Selection
More effectively involve the community	5a. CAGs 5b. TAGs 6. Community Involvement in Enforcement 7a. Training and Health Service Assistance to Communities 7b. Job Training and Development	5a. Community Participation in Designing Risk Assessments 18. Pilot Community-Based Remedy Selection Process 19. Establish Ombudsman in Every Region 20. Improve Communication with Stakeholders

Communications Strategy for Administrative Reforms

Purpose: Emphasize importance of the administrative reforms to Regional personnel by preparing materials for them to use to communicate to the public, press, industry, and Congressional staff.

Preliminary Research

- Prepare a list of resources maintained by Headquarters (HQ) such as fact sheets on specific reforms and overview presentations of all reforms.
- Gather information from Regions on their success stories. For example: Is there a site in Region II where there were substantial cost or time savings due to remedy review? What sites does Region VII want to emphasize because of the economic benefits derived from redevelopment? OERR will work with the Regions to highlight success stories for Regional audiences.
- Ask each Region: What do you need to communicate the success of Superfund reforms to interested parties? How can you measure this success?
- Prepare a general overview briefing on status of administrative reforms. Insert Region-specific information for Speaker's and Press kits.

Products

- Speaker's Kit: (target community involvement contacts, Regional administrative reform representatives, Regional Division Directors, Regional Counsels)
 - ▶ Checklist of options for Regions to use to communicate success of reforms
 - ▶ Overview Briefing (general)
 - ▶ Talking points **(Region-specific)**

- ▶ Administrative reforms scorecards (updated) *
- ▶ Slides on Regional success stories (Region-specific)
- ▶ Frequently asked questions (FAQs) on administrative reforms (general)
- ▶ List of HQ administrative reform contacts (general)
- ▶ State fact sheets used for Congressional briefings (Region-specific)
- * List of resources at the HQ level (e.g., internet addresses of key documents such as annual report) (general)
- ▶ "The Facts Speak for Themselves" or updated version (general)
- ' Press Kit: (national/local press)
 - ▶ Overview Briefing (general) a
 - ▶ Talking points (Region-specific)
 - ▶ Administrative reforms scorecards (updated)
 - ▶ Fact Sheets on Regional Success Stories (Region-specific)
 - ▶ State fact sheets used for Congressional briefings (Region-specific)
 - ▶ FAQs on administrative reforms (general)
 - ▶ Notice of upcoming events/milestones (Region-specific)
 - ▶ Articles, reports, and press releases on Superfund successes (Region-specific)
 - ▶ List of HQ administrative reforms contacts (general)
 - ▶ "The Facts Speak for Themselves" or updated version (general)

Proposed Regional Outreach Activities

- Brief Congressional staff from each Region to promote understanding of EPA reforms. Prepare briefing package for Congress including State-specific information.

Maintain a mailing list for sending information on administrative reform accomplishments.

Target Regional/national events to highlight administrative reforms.

Investigate existence of photo archives for use in success stories, fact sheets, and other briefing materials.

- Schedule site events, meetings, conference calls, and other outreach opportunities to communicate successes. Schedule a "success story" site celebration/press availability or press conference to get the message out.